

**SUPPLEMENTAL REPORT OF THE DEPARTMENT OF JUSTICE
SPECIFIC FACTS OF JEREMY McDOLLE'S POSSESSION OF A FIREARM
AND RECENT CLAIMS OF NEW EVIDENCE**

DATE OF INCIDENT: SEPTEMBER 23, 2015

Dated: September 22, 2020

Purpose of the Department of Justice Report

This is a supplemental report of the Delaware Department of Justice, Division of Civil Rights and Public Trust, intending to address recent claims of new evidence in the shooting death of Jeremy McDole, and to set forth specific facts regarding his possession of a firearm on September 23, 2015.

The Delaware Department of Justice issued a public report on May 12, 2016, detailing its conclusion that the shooting death of Jeremy McDole by Wilmington Police officers did not constitute a criminal offense.¹ On July 28, 2020, the Delaware Department of Justice updated the original public report on its website by including previously undisclosed photographs of the firearm found in Jeremy McDole's possession at the time of his death. Whether a firearm was, in fact, in the possession of Jeremy McDole in the moments leading up to his death on September 23, 2015, has at times persisted as a question in the public sphere. This report seeks to provide greater transparency on Jeremy McDole's possession of a firearm by disclosing the relevant evidence. Additionally, the Delaware Department of Justice has maintained a commitment to review any new evidence in criminal matters that are not legally foreclosed. This report will address the new evidence on this matter that has since been offered and obtained.

To reach our conclusion, the Division of Civil Rights and Public Trust reviewed evidence consisting of interviews of civilian witnesses – both new and old – and the original interviews of police witnesses and the emergency medical personnel. We also reviewed the scene photos, the 911 recording, the dispatch records, video footage, police reports, autopsy and toxicology records, previously undisclosed DNA analysis, the gunshot residue analysis, and the gun trace results. Additionally, the Division of Civil Rights and Public Trust coordinated a new ballistics analysis of the firearm found in Jeremy McDole's possession by a separate, expert firearms examiner – to supplant any previous findings of Carl Rone.² Finally, we issued subpoenas to members of the public who claimed to have new evidence but had not provided any evidence to the DOJ.

This report contains evidence new and old, and includes previously undisclosed evidence of McDole's DNA on the firearm, the firearm's origins and specifics, and McDole's toxicology. The report seeks to bring forth transparency and a conclusion with regard to the firearm found in the possession of Jeremy McDole on September 23, 2015, while determining the impact of any new evidence.

¹ See <https://attorneygeneral.delaware.gov/executive/wilmington-police-report/>

² We did this to investigate all allegations, even though Carl Rone's prior analysis of Jeremy McDole's firearm was not germane to the conclusions reached in the original report.

Jeremy McDole's Possession of a Firearm

The 911 caller – Civilian Witness One:

On September 23, 2015, police responded to the area near the AutoZone on Lancaster Avenue – the 1800 block of Tulip Street – because of a 911 caller reporting about a man in a wheelchair, armed with a gun, who had fired the gun and may have shot himself. The full 911 call was made part of the original report, and included the following communications with and from the 911 caller:

CALLER: By AutoZone on Lancaster and Scott. Yes we need police, we need an ambulance, a man just shot his self, by the, in the AutoZone parking lot he shot his self.

OPERATOR: He shot his self?

CALLER: He was sitting and he shot his self and he rolling out of the wheelchair and he laying here on the ground.

OPERATOR: Okay.

CALLER: Please send the ambulance and the police, please.

OPERATOR: Okay, okay I'm just, look I'm, I just need you to stay on the line with me.

CALLER: Okay, the AutoZone at Scott Street.

OPERATOR: Stay on the line with me, okay.

CALLER: AutoZone at Scott Street.

OPERATOR: Stay on the line with me.

CALLER: Please send somebody, oh my God! Please send somebody quick! AutoZone and Scott Street.

OPERATOR: He shot himself, []?

CALLER: Yes, yes! Please and he still has a gun, please and he is moving a little bit but he shot his self! He is on the ground and he's moving around and he has a weapon in his hand! Please get somebody here!

OPERATOR: All right[], we getting officers coming up there right now.

Several responding officers, in addition to those who ultimately fired their weapons, recalled interacting with the 911 caller once they arrived on scene. The 911 caller directed the responding officers toward Jeremy McDole, by pointing at him, and warned them that he still had a gun. Officer Haley Cockerham recalled the 911 caller screaming “[h]e has a gun!” Officer Lindsey Hageman recalled the 911 caller saying directly to her, repeatedly, “baby get down, he has a gun!” and “be careful, he has a gun!”

Civilian Witness Two:

A second civilian witness who attempted to call 911 was located at the scene and brought to the police station for an interview. This witness, Civilian Witness Two, was on the porch of a

house, heard a gunshot, and heard the 911 caller yell “he’s shooting!” Civilian Witness Two said s/he saw Jeremy McDole in his wheelchair and heard 3-4 gunshots. Civilian Witness Two said s/he tried to call 911 on Bluetooth, but could not hear anything, and gave up once Civilian Witness One got through. Civilian Witness Two said s/he saw Jeremy McDole on the ground, but he got back into his wheelchair. Civilian Witness Two said that although s/he could not see a gun, the gunshots were coming from Jeremy McDole and no one else was around. Once police arrived, Civilian Witness Two witnessed Jeremy McDole continue to move in his wheelchair, and it appeared that he was reaching for something.

Civilian Witness Three:

Civilian Witness Three gave an interview to police on September 25, 2015. This witness said s/he was working on a vehicle in the auto repair shop and heard what s/he thought were “fireworks.” After hearing the sound of fireworks again, s/he looked around the corner and saw a person on the ground near a wheelchair. Civilian Witness Three said the “fireworks” came from the area under the tree where s/he saw the person near a wheelchair. Civilian Witness Three said no one else was around the man near the wheelchair when the sounds of fireworks were occurring.

Officer Hailey Cockerham – Non-shooting Police Witness One:

Officer Cockerham was a responding officer, who remembers Civilian Witness One screaming “[h]e has a gun! He has a gun!” After the shooting, Officer Cockerham approached Jeremy McDole. She stated that his pants were partially down, and she saw a “heavy object” in his boxer shorts, along the right side of his thigh. Officer Cockerham said that as she and other officers rolled Jeremy McDole onto his back, she retrieved the object, with a gloved hand. It was a handgun. Officer Cockerham placed the gun on the ground, to her right and kept the gun in her periphery. She then began to do chest compressions on Jeremy McDole.

Officer Lindsey Hageman – Non-shooting Police Witness Two:

Officer Hageman was a responding officer. She stated that a civilian, Witness One, was yelling at her to get down and pointing toward Jeremy McDole. Officer Hageman stated she saw Jeremy McDole rolling slightly in the wheelchair and saw that he had his hands around his waistband. After the shooting, Officer Hageman approached Jeremy McDole with other officers. As he was being rolled onto his back, she saw the barrel of a handgun in his boxer shorts on the right side. She then ran to get an AED (automated external defibrillator) to try to render aid.

Officer Brenda Merced – Non-shooting Police Witness Three:

Officer Merced was a responding officer. She stated that she was flagged down by the person determined to be the 911 caller, who pointed to a man in a wheelchair. The 911 caller said to her that the man in the wheelchair had a gun and had just shot himself. Officer Merced stated Jeremy McDole “was doing a gesture like he had something” and “he just kept reaching...I saw a lot of movement with his hands.” Officer Merced further stated that he had “a blank stare.” Following the shooting, Officer Merced saw a crowd forming, so she ran to get caution tape.

Officer David Ham, Daniel Moore, and Molly McNulty – Non-Shooting Police Responders:

Officers Ham, Moore and McNulty all responded to the scene, and all witnessed Jeremy McDole fall from his wheelchair after the shooting. Each of them aided in securing the crime scene and none observed the firearm directly.

Emergency Medical Witness One:

Emergency Medical Witness One is a New Castle County Paramedic. When she arrived on scene, she recognized a female police officer who she knew as “Hailey” standing alongside Jeremy McDole’s body, and over a firearm, making sure the gun was not moved or touched. Emergency Medical Witness One stated that at no point did she observe anyone touch or alter the firearm.

Emergency Medical Witness Two:

Emergency Medical Witness Two and her partner are EMTs. Emergency Medical Witness Two recalled approaching Jeremy McDole, while he was lying on the ground, and it appeared to her that he was deceased. Emergency Medical Witness Two observed a handgun next to Jeremy McDole’s body. She further stated that the crowd became unruly, and she noticed police officers attempting to control the scene.

Emergency Medical Witness Three:

Emergency Medical Witness Three and his partner are EMTs. Emergency Medical Witness Three recalled arriving at the scene and noticing police officers performing CPR on Jeremy McDole, and that there was an AED attached to the patient. Emergency Medical Witness Three saw a female officer standing over a handgun that was on the pavement.

Emergency Medical Witness Four:

Emergency Medical Witness Four is an EMT with St. Francis Hospital. Emergency Medical Witness Four moved an ambulance closer to where Jeremy McDole was located. As he was waiting for ALS (advance life support) to respond, he saw “Officer Hailey” standing over a revolver. Emergency Medical Witness Four also stated he did not observe any police officers congregating – he said the other officers were focused on controlling the crowd.

Jeremy McDole’s DNA is on the Firearm:

DNA testing on the blood of Jeremy McDole was compared to swabs from the grip, trigger and cartridges (bullets) of the .38 revolver. The DNA analysis was completed by Bode Cellmark Forensics in Lorton, Virginia – and a Senior DNA Analyst issued a report on December 4, 2015.

The DNA profile obtained from the grip matches Jeremy McDole.³ The probability of randomly selecting an unrelated individual with this DNA profile is 1 in 550 quintillion in the US African American population. This is consistent with Jeremy McDole having the gun in his possession. The DNA report is now made a part of our public materials.

Gunshot Residue (GSR) is on Jeremy McDole’s Hand:

A gunshot residue (GSR) kit containing five total samples and one item of clothing were received by the RJ Lee Group in Monroeville, PA, on October 7, 2015. A report was issued by the Forensic Science Department which found GSR particles on Jeremy McDole’s right palm and right sleeve. This is consistent with Jeremy McDole not only having the gun in his possession, but also firing it. The GSR report is now made a part of public materials.

The ATF Trace of the Firearm:

The firearm found in Jeremy’s McDole’s possession is an Armscor .38 model 200 revolver, with serial number AP207550. As discussed in the original report, the Bureau of Alcohol, Tobacco, Firearms and Explosives traced the firearm’s origins. The ATF Trace is now a part of our public materials.

The .38 revolver was purchased in Lexington, South Carolina on September 19, 2009. It was reported stolen from a motor vehicle on April 20, 2015. The reporting person for the stolen firearm described it as a .38 caliber revolver with a broken hammer. The tip of the hammer of the .38 revolver – as seen in a close-up of the photographs on our website – is broken off.

³ The DNA profile on the trigger of the revolver is consistent with a mixture of at least two individuals, including at least one male contributor – and Jeremy McDole cannot be excluded as a contributor.

Recently, one person claimed that the firearm the police recovered in conjunction with a separate officer-involved shooting was also a .38 revolver.⁴ The gun in that case, however, has a different manufacturer, is a different model, has a different serial number, was stolen from a different jurisdiction and is visually distinct. The firearm recovered in that case is a Ruger .38 model LCR, serial number 1540-86795, stolen out of Pennsylvania.

Jeremy McDole's Possession of a .22 Caliber Firearm Before the .38 Revolver:

The McDole family was also concerned that Jeremy McDole's firearm should have been a .22 caliber handgun, instead of a .38 caliber revolver. On June 19, 2015, Jeremy McDole's girlfriend purchased a Walther P22 semi-automatic handgun, with serial number WA076631 from X-Ring Supply, along with a box of .22 caliber ammunition. She kept the handgun and ammunition behind a couch in her basement but stated on September 24, 2015 – the day after Jeremy McDole's death – that the handgun and ammunition were missing. Jeremy McDole's girlfriend told police that she believed he had stolen her .22 caliber handgun.

On September 21, 2015 – two days prior to Jeremy McDole's death – Wilmington Police received a complaint from a rehabilitation facility that Jeremy McDole was in possession of a gun. Facility staff noted Jeremy McDole was acting "strange" and "paranoid" on the previous day, September 20, 2015, and admitted he was smoking PCP. A day or two prior to September 20, Jeremy McDole was outside on a veranda with a fellow resident, and according to the fellow resident, he pulled out a .22 caliber handgun and said "I sell these. Any kind you want I can get."

An acquaintance of the family came forward to the police on September 28, 2015 and stated that s/he knew Jeremy McDole had been using PCP lately, and that he recently shot at a camera on 2nd and Rodney Streets. S/he further stated that Jeremy McDole had been acting "irate" all week, and that s/he knew he had a gun with him around 11:00 AM on the day he was shot.

An additional witness stated s/he was with Jeremy McDole on the 100 block of N. Rodney Street on the day of his shooting, between roughly 11:00 AM and 2:00 PM. Jeremy McDole said to this witness that he wanted to go to Browntown because he planned to pick up a gun and possibly a "dipper" from someone. A "dipper" is slang for a PCP-laced marijuana cigarette. This witness pushed Jeremy McDole to Browntown and said they met with a group of guys, but was unsure if Jeremy McDole exchanged a gun during that time. It is not implausible that a newer .22 would trade for an older, stolen and partially damaged .38 – plus drugs.

The .22 caliber firearm purchased by Mr. McDole's girlfriend was ultimately recovered in an unrelated arrest by Newport PD on July 11, 2016, during a vehicle stop. The driver committed

⁴ See <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2019/11/Harris-Use-of-Force-Report-11-4-19.pdf>

a traffic violation near Route 141, while in possession of drugs, and having come from the Maryland Avenue direction.

Jeremy McDole's Toxicology Report:

A toxicology report for Jeremy McDole's blood was completed on November 4, 2015, by the Chief Forensic Toxicologist for the Delaware Division of Forensic Science. The results are now a part of our public materials.

The results include a heavy presence of Phencyclidine (PCP), at 330ng/mL. This is consistent with the witness statements from the rehabilitation facility on the days prior to the shooting, the civilian witness statements of those who were with him on the day of the shooting, the fact that Jeremy McDole was unresponsive to police commands in the moments before the shooting, and the statement by Officer Merced that Jeremy McDole had a "blank stare."

Supplanting Carl Rone with a New Ballistics Examination:

Carl Rone conducted a ballistics examination of the evidence from the shooting scene. A few years later, Mr. Rone was charged with crimes related to his time reporting and unrelated to any findings previously made. Rone's ballistics report did not weigh on whether the police acted criminally in the shooting of Jeremy McDole. Regardless, in an effort to maintain transparency and trust, the ballistics evidence was re-examined by a qualified and widely recognized expert, Stephen Deady. Fortunately, the evidence Rone examined – ballistic evidence – is not fungible. In other words, unlike some forms of evidence in a criminal case which lack distinctive or unique characteristics, ballistic evidence bears permanent markings.

Stephen Deady issued a report on August 21, 2020 which is now a part of our public materials. He examined and test-fired the recovered firearm, a .38 Armscor revolver with serial number AP207550. He determined that the firearm is operable and capable of being discharged.

Stephen Deady further concluded that the revolver in McDole's possession fired four times and that the four cartridge cases, the "spent" rounds within the revolver, were in fact discharged – fired – by the same, .38 revolver in evidence. This is consistent with the statements from the civilian witnesses that McDole fired a gun multiple times. This is also consistent with the scientific findings of the Gun Shot Residue analysis – that McDole had significant GSR particles on his hand and on his sleeve.

Recent Claims of New Evidence

In June of 2020, a civilian accompanied members of the McDole family to a meeting at the Delaware Department of Justice. During that meeting, the civilian said he had an interview of a new witness—but would not agree to provide it the Department of Justice. In July of 2020, Jeremy McDole’s sister met with the Division of Civil Rights and Public Trust. She provided the name of the witness who had been interviewed by the civilian. She also asked that Jeremy McDole’s girlfriend at the time be interviewed about the .22 caliber handgun – Ms. McDole may not have been aware that the girlfriend had already been interviewed, as discussed above.

Immediately after receiving the name of the witness, an investigator with the Division of Civil Rights and Public Trust began to attempt contact with the witness. The witness given by Jeremy McDole’s sister, for purposes of this report, is designated as New Civilian Witness One.

New Civilian Witness One:

After several outreach attempts, New Civilian Witness One was unresponsive. The Division of Civil Rights and Public Trust then issued her/him a subpoena for an interview, which she ignored. The Division then issued a subpoena to the civilian who interviewed her/him for any copies of the interview with New Civilian Witness One. On Wednesday September 9, 2020, the civilian provided copies of two brief statements he obtained from New Civilian Witness One regarding the shooting of Jeremy McDole.

On September 18, 2020, after additional phone contact had been unsuccessful, investigators with the Division of Civil Rights and Public Trust visited New Civilian Witness One’s residence and interviewed her/him.

The witness said that on September 23, 2015, s/he was in the area of Scott Street and Tulip Street when police began arriving on scene. After police arrived on scene, s/he walked through the parking lot at the front of the AutoZone, around the building in the direction of Tulip Street, and then walked approximately thirty yards west on Tulip Street. From this location, s/he was able to observe Jeremy McDole in his wheelchair and could hear officers giving him commands to get out of the wheelchair. Jeremy McDole reached down and adjusted the waist of his pants and at this point officers began yelling that McDole had a gun.

The witness then turned away from Jeremy McDole, at which point s/he heard gunshots. S/he then turned back around and saw McDole was on the ground. The witness did not hear any conversation between officers but stated they looked like they realized they shot him and he did not have anything on him. An overhead Google Earth photograph of the AutoZone was used to assist the witness in describing her/his route of travel. Surveillance footage recovered from the

AutoZone captures the East side of the parking lot that the witness alleges s/he walked through, but the witness is not observed in the recording. During her/his statement, the witness indicated that police were taping off the scene prior to the shooting of Jeremy McDole taking place.

New Civilian Witness One's Prior Recorded Phone Statements:

In New Civilian Witness One's previously recorded statements obtained via subpoena, s/he indicates initially that s/he was not sure where s/he was standing. S/he then had a conversation with an unknown third party, while being interviewed, where s/he asked, "Where the hell was I?" And "[weren't] we up there?" S/he then indicated that s/he was about 100 feet away, and, later said s/he was about 4 or 5 car lengths away. S/he advised that s/he saw Jeremy McDole get shot and fall out of his chair, which is inconsistent with her/his statement to a Department of Justice investigator about turning away and not seeing McDole get shot. Further, she stated that she was in the AutoZone parking lot on McDole's right side. The witness stated that s/he did not see Jeremy McDole have a gun in his hand after he was shot and fell out of his chair. This is consistent with the facts provided by other witnesses discussed above – the gun was not in Jeremy McDole's hand but in his boxers.

Conclusion

A review of all the evidence, including new interviews and the previously-undisclosed firearm evidence, does not alter the charging decision in this matter. Jeremy McDole's DNA was on the firearm and he had gunshot residue on his hand and sleeve. These findings are consistent with eyewitness statements about McDole being in possession of, and firing, a firearm.

The Division of Civil Rights and Public Trust concludes that Jeremy McDole was in possession of the .38 caliber revolver in the moments before and during his shooting. The statements from civilian witnesses, including the 911 caller, support that Jeremy McDole was alone when he was firing the weapon. The DNA results support the existence of Jeremy McDole's DNA profile the handgun at its grip and potentially its trigger. The GSR on his body and clothes support that Jeremy McDole indeed fired the gun, and the ballistic analysis suggests the gun was fired four times before McDole's death. The conduct of McDole in the days beforehand suggests that he was trying to sell or at least trade his girlfriend's .22 caliber firearm, and the toxicology report corroborates the witnesses closest to Jeremy McDole in the hours and days before the shooting – and his behavior at the time. Based on all available evidence, Jeremy McDole was in possession of the firearm at issue, and the original charging decision will not be changed.

This case has touched the lives of many Delawareans, but it has undoubtedly weighed most heavily on those at its center – and their families and loved ones. The Delaware Department of Justice believes transparency here can only serve to foster the interest of justice, rebuild public trust, and, hopefully, bring peace.